

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF OHIO VALLEY GAS)
CORPORATION FOR APPROVAL OF A) CAUSE NO. 43522
GAS SERVICE CONTRACT WITH)
PREMIER ETHANOL, LLC AND) APPROVED: OCT 15 2008
PROTECTION OF CONFIDENTIAL)
INFORMATION)

BY THE COMMISSION:

Gregory D. Server, Commissioner

Lorraine Hitz-Bradley, Administrative Law Judge

On June 26, 2008, Ohio Valley Gas Corporation ("OVGC" or "Petitioner") filed its Verified Petition requesting approval from the Indiana Utility Regulatory Commission ("Commission") for approval of a gas service contract with Premier Ethanol, LLC ("Premier") and for protection of certain confidential information. A copy of a Long-Term Transportation Service Contract with Premier (the "Contract"), from which certain confidential information was redacted, and testimony from S. Mark Kerney, Vice President and Chief Financial Officer for Petitioner were included in the Petition as exhibits in support of the contract.

On August 28, 2008, the Indiana Office of Utility Consumer Counselor ("OUCC") filed a *Notice of Intent Not to Prefile Testimony* ("NOI"). The NOI indicates the OUCC reviewed the Verified Petition, the unredacted direct testimony of Mr. Kerney, confidential data responses, and an unredacted copy of the Contract. Based on the review, the OUCC gave notice stating it did not intend to prefile testimony in this Cause.

Pursuant to proper legal notice, a public hearing in this Cause was held at National City Center, 101 W. Washington Street, Room 224, Indianapolis, Indiana at 9:30 a.m. on September 23, 2008. Petitioner and the OUCC were represented at the hearing. No member of the general public appeared at the hearing, at which Petitioner's Verified Petition, including the Contract as Exhibit A and Mr. Kerney's testimony in support of the Contract as Exhibit B, were accepted into the record without objection. Upon request of the Presiding Officers through a docket entry issued on September 30, 2008, Petitioner filed a confidential, unredacted copy of the contract at issue in this matter as a late-filed exhibit. We hereby accept that filing and make it part of the record as Petitioner's Confidential Late-Filed Exhibit 2.

The Commission based upon applicable evidence herein and being duly advised in the premises, now finds:

1. **Commission Jurisdiction and Notice.** Petitioner is a public utility as defined in Ind. Code §8-1-2-1(a) and is subject to the jurisdiction of this Commission in the manner and to the extent provided by the laws of the State of Indiana. Petitioner is an Indiana corporation that owns and operates plant, property and equipment in the State of Indiana for the delivery and sale of natural gas to residential, commercial and industrial customers. Therefore, the Commission has jurisdiction over the Petitioner and the subject matter in this Cause.

2. **Petitioner's Characteristics.** Petitioner has corporate power and authority to engage in and is engaged in the business of rendering gas distribution service within the State of Indiana under indeterminate permits, franchises and necessity certificates, heretofore duly acquired. Petitioner owns, operates, manages and controls, among other things, plant, property, equipment and facilities that are used and useful for the production, storage, transmission, distribution and furnishing of gas service throughout Indiana, including the area where Premier's Portland, Indiana ethanol production facility ("Facility") is located.

3. **Relief Requested.** Petitioner requests Commission approval of the contract for local gas transportation service between Petitioner and Premier to serve Premier's gas requirements at its Portland, Indiana Facility and requested that certain provisions of the contract containing trade secrets be protected from public disclosure pursuant to I.C. §5-14-3. We have reviewed the evidence of record and have determined that Petitioner has met its burden in showing the information is competitively sensitive and that it should be accorded confidentiality in accordance with our statutes. We have accepted Petitioner's late-filed confidential exhibit and hereby grant the requested confidential treatment, and such contract will be held as confidential and excepted from public disclosure pursuant to I.C. §5-14-3.

4. **Petitioner's Direct Evidence.** In support of its Petition and the Contract, Petitioner submitted the direct testimony of S. Mark Kerney. Mr. Kerney testified that Premier's natural gas usage is unique from Petitioner's existing customers because of large through-put volumes and its level load profile. He testified that the Contract resulted from good faith arm's length negotiations and enables Petitioner to offer Premier rates and terms necessary to attract Premier to Petitioner's system. He also testified that Premier could have located its plant in another gas service provider's service area or in another state.

The Contract provides Premier assurance of rate stability and competitive rates and terms for gas services, and Petitioner is assured of contributions to Petitioner's fixed costs, thus benefitting Petitioner's existing and future customers. He testified that the contributions to fixed costs are established by a minimum transportation service clause of the Contract requiring Premier to pay Petitioner for the gas services projected to be required during a specified number of years of the Contract regardless of usage, and in turn protects Petitioner from bypass of its system.

Mr. Kerney testified that the Contract term is to begin on the earlier of August 1, 2007 or the actual date on which service to Premier commences, and at the end of the initial term shall remain in effect until either of the parties provides 120 days written notice. He testified that the through-put rate and service charges will be assessed to Premier on a monthly billing cycle basis, and that the through-put rates and service charges will be adjusted for inflation periodically as designated in the Contract. He testified that the rates included in the Contract cover the fixed and incremental costs incurred in providing gas service to Premier, and that the benefits from the contract include investment and employment opportunities for Indiana and communities local to the Facility.

Mr. Kerney also testified that the provision of gas service to Premier will not adversely impact the provision of service to other customers of Petitioner because Petitioner contracts for sufficient gas supply to serve the needs of its presently existing customers, and Premier will

procure its own gas supply and balance its gas supply with its transmission pipeline service provider.

5. **Commission Findings.** Petitioner seeks approval of the Contract under the provisions of I.C. §8-1-2-24 and §8-1-2-25. Section 24 provides:

Nothing in this chapter shall be taken to prohibit a public utility from entering into any reasonable arrangement with its customers or consumers, or with its employees, or with any municipality in which any of its property is located, for the division or distribution of its surplus profits, or providing for a sliding scale of charges or other financial device that may be practicable and advantageous to the parties interested. No such arrangement or device shall be lawful until it shall be found by the commission, after investigation, to be reasonable and just and not inconsistent with the purpose of this chapter. Such arrangement shall be under the supervision and regulation of the commission.

Section 25 provides as follows:

The commission shall ascertain, determine and order such rates, charges and regulations as may be necessary to give effect to such arrangement, but the right and power to make such other and further changes in rates, charges and regulations as the commission may ascertain and determine to be necessary and reasonable, and the right to revoke its approval and amend or rescind all orders relative thereto, is reserved and vested in the commission, notwithstanding any such arrangement and mutual agreement.

Therefore, discounted rate contracts are lawful if the Commission finds their provisions to be reasonable and just, practicable and advantageous to the parties.

We find the Contract and the evidence submitted by Petitioner in support of the Petition and the Contract satisfies all the legal requirements imposed by Sections 24 and 25. The Contract will result in enabling Petitioner to obtain revenues from the provision of gas service to Premier and provide a contribution to Petitioner's fixed costs, and the contract is therefore reasonable, just, practical, and advantageous to Petitioner, Premier and Petitioner's existing and future customers, and therefore should be approved.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The Long-Term Transportation Service Contract by and between Petitioner and Premier submitted for approval in this Cause shall be and hereby is in all respects approved.

2. This Order shall be effective on and after the date of its approval.

GOLC, LANDIS, SERVER AND ZIEGNER CONCUR; HARDY ABSENT:

APPROVED: OCT 15 2008

I hereby certify that the above is a true and correct copy of the Order as approved.



Brenda A. Howe

Secretary to the Commission